

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRR No.2016 of 2014 (O&M)
Date of Decision:- October 20, 2016**

Gurjeet Singh

...Petitioner

VERSUS

Dilbagh Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.D.S.Malwai, Advocate
for the petitioner.

Mr.G.S.Nahel, Advocate
for respondents No.1 to 8.

Mr.Varun Sharma, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

The petitioner has filed this revision petition under Section 401 Cr.P.C. against Dilbagh Singh and other respondents, challenging the order dated 16.04.2014 passed by learned Addl. Sessions Judge, Sangrur, vide which the application filed by the petitioner for framing of the charge under Section 302 IPC against the accused-respondents was dismissed.

Notice of motion was issued and learned counsel for the private respondents as well as learned State counsel appeared and contested the petition.

I have heard learned counsel for the parties and have gone

through the record.

From the record, I find that challan has been presented by the police of Police Station Sandaur in case FIR No.97 dated 22.12.2011 under Sections 148, 149, 308, 323 and 506 IPC. During the pendency of the trial, an application was filed by the complainant-petitioner for framing of the charge under Section 302 IPC. It is the case of the petitioner that FIR was registered for murderous assault on Avtar Singh. However, the police in connivance with the accused, has presented the challan under Section 308 IPC and injured Avtar Singh had died due to head injury. It is further the case that police in connivance with the medical officers, obtained a wrong report regarding the cause of death and submitted the report to Illaqa Magistrate when an application was moved for direction to the police to submit the complete charge-sheet under Section 302 IPC. The first opinion of the doctors after the post-mortem regarding cause of death was 'pulmonary thrombosis' which is sufficient to cause death in normal course of nature and all the injuries are ante mortem in nature. Two injuries sustained by the deceased Avtar Singh were treated at PGI, Chandigarh and injury No.1 was treated by surgical intervention.

Learned Addl. Sessions Judge, Sangrur, after taking the reply and after hearing learned counsel for the parties, dismissed the application.

I have gone through the impugned order dated 16.04.2014. The order is correct, as per evidence and law. No illegality has been committed by learned Addl. Sessions Judge, Sangrur. First of all, Avtar Singh died after three months of the occurrence. The occurrence took place on 21.12.2011 and the FIR was lodged on 22.12.2011. Avtar Singh was admitted in the hospital on 21.12.2011 at about 3.10 P.M. with lacerated

wound on the left side of scalp of parieto temporal area and was advised X-

ray. Learned trial Court held that as per the record, the patient was admitted on 27.12.2011 at 5.30 P.M. at HMC Hospital, Ludhiana. Report dated 30.12.2011 by doctor HMC Hospital, Ludhiana reflects that the injuries on the person of Avtar Singh were dangerous to life. The perusal of the medico legal case summary by PGI, Chandigarh, reveals that Avtar Singh was discharged on 27.12.2011 after operation. After the post-mortem, the doctor gave the opinion that cause of death in this case is pulmonary thrombosis which is sufficient to cause death in normal course of nature. In the impugned order, there is also opinion of Board of Doctors, which is as under:-

“A. The two injuries sustained by the deceased Avtar Singh s/o S. Jarnail Singh r/o village Kalian as per MLR No.4/GSP/2-11 dated 21.11.2011 were treated at PGI Chandigarh the injury No.1 was treated by surgical intervention. Patient was recuperating from injury as per GCS score given in the record.

B. There is no follow up record of the treatment taken and condition of the patient from HMC Hospital Neuro Trauma-spine-centre, LDH on 21.01.2012. Therefore it is difficult to conclude that the pulmonary thrombosis which was cause of the death as per Post-mortem report no.GSS/01.12 dated 27.03.2012 has occurred due to as a complication of the head injury or some of her medical ailment. Hence the injury No.1 is not directly responsible for the death of the patient.”

The perusal of this opinion of the Board of Doctors shows that injury No.1 is not directly responsible for the death of the patient. Otherwise also, Avtar Singh died after about three months of the occurrence. Therefore, the death has not occurred directly due to result of injuries given in the occurrence. Secondly, the Court below held that charge was framed under Section 308 IPC on 02.07.2012 against Dilbagh Singh and Surjit Singh. Then after presentation of supplementary challan

against some other accused, charge was framed on 28.02.2013. Then on

summoning of the accused Gurjpal Singh, again charge was framed on 24.10.2013 but no argument was raised at that time for framing of the charge under Section 302 IPC.

The Court held that there is no material on the record regarding medical condition of Avtar Singh from 27.12.2011 to 27.03.2012. The death of Avtar Singh occurred on 27.03.2012. The Court below also discussed the injuries as per MLR as under:-

- “1. A lacerated wound on left side of scalp at parietal area 7 x 2 cm and 12 cm away from the left ear. Fresh bleeding present. Advised X-ray and Surgical opinion.*
- 2. Complaint of pain on the left hand at front side. No external mark of injury was seen. Advised X-ray and Orthopedic opinion.”*

The Court further held that as per post-mortem report, there are six injuries, which are as under:-

- “1. Multiple contusion of various size present on both forearm.*
- 2. Multiple tiny contusion neck.*
- 3. Infected wound present on occipital region extending to left ear.*
- 4. Infected wound bed sore present back almost entire lower back, left upper leg.*
- 5. 6 x 4 cm infected wound draining foul smelling, pus present, on right upper leg lateral surface.*
- 6. 10 x 4 cm infected wound, packed with gauze and draining foul smelling, pus present on left upper leg lateral surface.”*

In these circumstances, learned trial Court held that there is no material to frame the charge under Section 302 IPC.

From the perusal of the record, I find that the impugned order

dated 16.04.2014 has been passed as per law and no illegality has been committed. At this stage, there is no prima facie case for framing the charge under Section 302 IPC and no material is available connecting the injuries with the death of Avtar Singh.

In view of the above discussion, I find that the impugned order dated 16.04.2014 passed by learned Addl. Sessions Judge, Sangrur, is correct, as per law and the same is upheld.

Therefore, finding no merit in the present revision petition, the same is dismissed.

October 20, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No